



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

Docket Number FRA-2011-0085

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief. The petition has been assigned Docket Number FRA-2011-0085.

The BNSF Railway Company (BNSF) hereby petitions FRA for a waiver from 49 CFR Section 213.109(d)(6) to allow for the use of concrete crossties with one shoulder broken off where, if turned end for end, every other crosstie is fastened 100 percent on both rails. BNSF claims they have used these "three-quarter" ($\frac{3}{4}$) crossties in Class 1 and 2 track for many years, and have demonstrated that this method is safe and results in a stronger track structure in comparison with wood crossties under similar train operations. BNSF proposes that FRA grant BNSF a waiver of compliance that will effectively "grandfather" BNSF's continued use of these types of crossties at various locations throughout the BNSF operating system. BNSF also claims that: (1) the performance of $\frac{3}{4}$ crossties has not resulted in any derailments due to gage or crossties defects in over 20 years of use; (2) FRA has taken no exception to BNSF's use of $\frac{3}{4}$ concrete crosstie condition in the past; (3) it is unreasonable to expect BNSF to acquire and

install approximately 33,000 wood or concrete crossties at an estimated cost of \$6,600,000 by the mandated compliance date of November 8, 2011; (4) the removal of service of the existing tracks would cause an adverse impact to customers and operations; (5) the Gage Restraint Measurement System (GRMS) testing of the concrete crossties has confirmed that the installation of $\frac{3}{4}$ crossties meets the conditions contained in 49 CFR Section 213.110; (6) the $\frac{3}{4}$ crossties are environmentally sound; (7) BNSF will identify and inventory locations where $\frac{3}{4}$ crossties are currently installed, and when crosstie replacement is performed through normal maintenance cycles (identified locations will comply with 49 CFR Sections 213.109 and 213.127, accordingly); and (8) walking inspections of $\frac{3}{4}$ crosstie locations will be performed annually, except where GRMS testing is performed.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2011-0085) and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., W12-140, Washington, D.C. 20590.

- Hand Delivery: 1200 New Jersey Avenue, S.E., Room W12-140, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on December 14, 2011.

Robert C. Lauby
Deputy Associate Administrator
for Regulatory and Legislative Operations

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